



# Texas Department of Insurance

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IO #16375  
MBJ

June 9, 1992

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Opinion Committee

Claire Koriath-Chair  
Richard F. Reynolds-Member  
Allene D. Evans-Member  
Georgia D. Flint-Commissioner

RQ-409

The Honorable Dan Morales  
Texas Attorney General  
ATTN: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

RE: Request Concerning Health Maintenance Organization Solvency  
Surveillance Committee

Dear Attorney General Morales:

The Texas Department of Insurance respectfully requests an opinion from your office regarding the applicability of the Administrative Procedure and Texas Register Act ("APTRA"), TEX. REV. CIV. STAT. ANN. art. 6252-13a (Vernon Supp. 1992), and the Texas Open Meetings Act ("Open Meetings Act"), TEX. REV. CIV. STAT. ANN. art. 6252-17 (Vernon Supp. 1992) to the Health Maintenance Organization Solvency Surveillance Committee ("Committee"). The Committee was created under Section 36 of the Texas Health Maintenance Organization Act (Article 20A.36, Vernon's Texas Insurance Code) and amended by Acts 1991, 72nd Leg., ch. 242, §9.06, 1991 Tex. Sess. Law Serv. (Vernon), (hereafter referred to as the "Act").

The Committee is under the direction of the Commissioner of Insurance. It is governed by a nine member board of directors composed of five members representing health maintenance organizations and four members representing the general public. When a health maintenance organization is in a state of rehabilitation, liquidation, supervision or conservation, the Committee is authorized to provide monies for the purpose of paying the administrative expenses of this agency in the process of rehabilitation, liquidation, supervision or conservation. The Committee raises monies for these purposes by making "assessments" on health maintenance organizations doing business in this state. Assessments are levied and collected according to formulae stated in the Act.

I wish to inquire as to the applicability of APTRA and the Open Meetings Act to the Committee in particular as it relates to the conduct of its meetings. Under Section 3 of APTRA, it is unclear whether the Committee qualifies as an

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"agency" so as to subject the Committee to the provisions of APTRA. It would appear under subsection (b)(2) of the Act that at least certain documents prepared by the Committee should be excepted from the Open Records Act.

Furthermore, under Section 1 of the Open Meetings Act, it is unclear whether the Committee is a "governmental body" such that its meetings must conform to the requirements of the Open Meetings Act. This agency has endeavored recently to post notice of the Committee's board of directors' meetings in accordance with the Open Meetings Act. It is this agency's position that the Open Meetings Act applies to the Committee.

Based upon the foregoing, this agency respectfully requests an opinion which sets out the applicability of the provisions of APTRA and the Open Meetings Act to the meetings of the Committee.

Should your opinion indicate that the Open Meetings Act applies to the Committee, this agency further requests an opinion as to the length of time that the notice of Committee meetings must appear under the Open Meetings Act. The Committee meetings will be attended by the Commissioner or a member of the Commissioner's staff. Section 3A(h) of the Open Meetings Act indicates that notice must be posted for at least 72 hours preceding the scheduled time for the meeting, except that notice of a meeting of a state board, commission, department or officer having statewide jurisdiction must be posted for at least seven days preceding the day of the meeting. It is unclear whether the nature of the Committee and its functions or the attendance by the Commissioner or the Commissioner's staff will make the Committee a "commission" or other entity that is subject to the longer notice provisions. It is the Department's position that a seven day posting is required, if the Open Meetings Act applies, since the Committee has jurisdiction over all health maintenance organizations licensed in this state. I respectfully request an opinion regarding the length of time the notice of Committee meetings must appear.

Additionally, should your opinion indicate that the Open Meetings Act applies to the Committee, I request your opinion whether the Committee's board of directors may hold executive sessions to consider matters which are confidential pursuant to subsection (b)(2) of the Act.

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I extend my respects and appreciation for your early consideration of this matter.  
If you need further information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Georgia D. Flint". The signature is stylized with a large initial "G" and a long horizontal stroke.

Georgia D. Flint  
Commissioner of Insurance

GDF:JWN:cm